

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Ponon D. Kumar, M.D.
(PTAN: MI9469; NPI: 1366825986),
Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-702

Decision No. CR4724

Date: October 24, 2016

DECISION

I sustain the determination of a Medicare contractor, as ratified by the Centers for Medicare & Medicaid Services (CMS), to assign Petitioner, Ponon D. Kumar, M.D., an effective date for participating in the Medicare program as part of a group practice, of January 20, 2016.¹

I. Background

Petitioner is a physician. He requested a hearing in order to challenge the effective participation date determination, as affirmed on reconsideration, that I describe in this decision's opening paragraph. CMS filed a pre-hearing brief and a motion for summary judgment along with six proposed exhibits that it identified as CMS Exhibits (Exs.) 1-6. Petitioner filed a brief in opposition to CMS's motion plus 10 proposed exhibits that it identified as Petitioner's (P.) Exs. 1-10. Additionally, Petitioner proposed to offer testimony of two witnesses including himself and a representative of his billing agency.

¹ The January 20 effective date allows Petitioner to claim reimbursement from Medicare for items or services provided as early as December 21, 2015. 42 C.F.R. § 424.521(a)(1).

CMS moved to exclude P. Exs. 2-7 on the grounds that Petitioner had not offered these exhibits at reconsideration and that Petitioner had not shown good cause for offering them now. Petitioner opposed that motion. Finally, Petitioner moved that I take “judicial/administrative notice” of certain information relating to his status as a Medicare supplier and maintained by CMS.

I sustain CMS’s motion to exclude the exhibits and deny Petitioner’s motion that I take notice of information. As CMS correctly points out, P. Exs. 2-7 existed and were in Petitioner’s possession prior to the issuance of the reconsideration determination in this case, and Petitioner could have offered these at reconsideration. Petitioner did not establish good cause for me to receive them now. 42 C.F.R. § 498.56(e). He asserts that he was not represented by counsel at reconsideration and did not understand his obligation to present evidence then. But, he does not argue that he was denied the opportunity to retain counsel. Whether or not to be represented at reconsideration was something that was well within Petitioner’s ability to control. Petitioner cannot now claim the benefit of his own decision not to be represented.

Moreover, the material contained in P. Exs. 2-7 is irrelevant. As I shall discuss, the *only* material facts in this case pertain to the date when Petitioner filed an application to participate as part of a group practice. The exhibits all address other subjects.

I deny Petitioner’s motion that I take judicial and administrative notice because Petitioner made no showing that any of the information that he asserts I should take notice of is relevant to this case.

It is unnecessary that I decide whether the conditions for summary judgment are met here. CMS did not offer the testimony of any witnesses. Petitioner proposed calling two witnesses but failed to comply with my pre-hearing order of July 14, 2016, which required that all proposed testimony be submitted in either affidavit or declaration form. Consequently, there are no witnesses in this case and an in-person hearing would serve no purpose. I decide the case based on the parties’ written exchanges.

II. Issues, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether a contractor correctly determined Petitioner’s effective date of participation as part of a group practice to be January 20, 2016.

B. Findings of Fact and Conclusions of Law

The governing regulation is 42 C.F.R. § 424.520(d)(1). The regulation provides that the effective date of participation in Medicare for a physician supplier like Petitioner is the

later of the following: the date when the supplier submits an application for participation that is accepted by a contractor or the date when the supplier begins to provide services at a new practice location.

Petitioner filed an application to participate in Medicare as part of a group practice, East Michigan Hospitalists, on January 20, 2016. CMS Ex. 1. He filed no application to participate as part of that group prior to January 20. A contractor accepted the January 20 application. It granted Petitioner an effective participation date based on that application. That determination comports exactly with regulatory requirements. The contractor could not have given Petitioner an earlier effective participation date.

Petitioner argues that his effective participation date should be July 1, 2015, the date that he asserts he began treating patients as part of East Michigan Hospitalists. He predicates his contention on the following arguments, all of which are without merit.

First, Petitioner argues that he was already a Medicare-participating supplier as of July 1 and not a “newly enrolled” supplier. He contends that he had been a participant in his individual capacity previously and had been assigned a supplier number. He contends that his employment by East Michigan Hospitalists merely changed his business address and that CMS should have continued to allow him to claim reimbursement under his pre-existing supplier number. Request for Hearing.

The undisputed facts render this argument incorrect. Petitioner’s employment by East Michigan Hospitalists was not simply a change in business address. He changed his status as a supplier when he joined East Michigan Hospitalists. He was no longer a solo practitioner or an employee of another entity. He could no longer rely on his former status once he became employed by the new entity. He was obligated to re-apply for participation as part of the group practice. 42 C.F.R. §§ 424.505, 424.510(a)(1); *see Shalbhadra Bafna, M.D.*, DAB No. 2449 at 1-2 (2012).

Petitioner argues also that there is a “one-year statute of limitations” covering claims for services and that he is entitled to reimbursement because he filed his claims within one year of the date when he rendered the claimed services. Petitioner misreads the law. *See* 42 C.F.R. § 424.44(a)(1). The statute of limitations that Petitioner refers to does not confer any entitlement to reimbursement for a claim and it certainly does not confer participating status on a would-be provider or supplier. Rather, it limits the time period within which a validly participating supplier may submit a claim for a service.

Finally, Petitioner asserts that he attempted in good faith to become a participant as early as July 2015 and that if he failed to complete an acceptable application prior to January 20, 2016, it was due to the fault of other individuals and entities and not him. According to Petitioner, he retained the services of a specialist in filing participation applications but, for one reason or the other, that entity failed to file an acceptable application. Thus,

according to Petitioner, any delay in having his application approved was not his fault. He asserts that it would be unfair to deny him reimbursement for the services he provided if he acted in good faith.

That is an equitable argument. Petitioner asserts that it is unfair to deny him reimbursement for his services because at all times he acted in good faith. I have no authority to hear and decide this argument. *US Ultrasound*, DAB No. 2302 at 8 (2010).

_____/s/_____
Steven T. Kessel
Administrative Law Judge